

### **REMARKS**

This is in response to the third Election of Species Requirement mailed May 15, 2008. Claims 1-20 are pending. By Response to Election of Species filed November 2, 2007, Applicants elected, without traverse, the following species:

- List I: Species B, Step c) takes place after step b);
- List II: Species A, adding to a microorganism's enrichment medium at least one non-fluorescent substrate specific to enzymes;
- List III: Species A, xanthenes;
- List IV: Species A, fatty acid; and
- List V: Species A, flow cytometry.

Claims 1-6 and 8-20 are readable on the elected species. Claim 7 has been withdrawn from further consideration.

By Response to the second Election of Species requirement filed February 25, 2008, Applicants elected, without traverse, Species A, *Listeria monocytogenes*. Claims 1-6 and 8-20 are readable on the elected species. Claim 7 has been withdrawn from consideration.

Applicants traverse the third Election of Species requirement mailed May 15, 2008.

Applicants submit that this third restriction requirement is improper. Applicants believe that claims 16 and 17 are not directed to separate inventions. In fact, both of claims 16 and 17 are directed to a method of detection comprising steps a) to e) of claim 1; and the filtration step before steps a) to e) of claim 16, which filtration step can occur according to the realization mode of claim 16 or of claim 17.

Thus, these claims do not include mutually exclusive characteristics as stated by the Examiner, since both are directed to a method of detection comprising the same six steps as defined in claims 1 and 15, except that the first filtration step can be done according to two different realization modes. Finally, claims 1 to 17, including claims 16 and 17, are linked by a single general inventive concept corresponding to the efficiency of detection of the method of claim 1.

However, in further response, Applicants hereby elect claim 16, concerning the filter whose porosity is a size selected from the group consisting of between 20 and 150 microns, between 30 and 100 microns, and approximately 63 microns. The claims readable on the elected claims are claims 1-6, 8-16, and 18-20.

Applicants will request rejoinder of the non-elected subject matter and will perfect this request when the elected species are considered allowable.

Applicants also reserve the right to file one or more divisional applications directed to non-elected subject matter. With the entry of this amendment, claims 1-6 and 8-20 will be active in this case. Applicants respectfully request examination of the instant application on the merits in due course.

Should the Examiner believe that anything further is necessary in order to place this application in better condition for allowance, the Examiner is requested to contact the undersigned at the telephone number listed below.

In the event that additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefore are hereby authorized to be charged to our Deposit Account No. 01-2300 referencing docket number 029440.00009.

Respectfully submitted,

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